

assessment of the offender and the offense. See *Rita v. United States*, 551 U.S. 338 (2007). Accordingly, a sentencing judge must use his or her experience and common sense when determining what value the “starting point” should have in the final analysis. As Judge Cabranes and Professor Stith point out in their book, “the explosion of case law on federal sentencing contains almost no discussion of the purposes of sentencing generally or in the specific case—almost no articulated concern as to whether a particular defendant should be sentenced in the interest of general deterrence, rehabilitation, retribution, and/or incapacitation.” Kate Stith & Jose Cabranes, *Fear of Judging: Sentencing Guidelines in the Federal Courts* (Univ. of Chicago Press 1998). Now that judges are free to discuss these purposes of sentencing within the context of the individualized facts of the offender and the case, an exchange among the courts, defenders, prosecutors, probation officers, victims, and the Sentencing Commission can take place and a “common law” of sentencing can and should emerge. A great example of this “common law” of sentencing that actually addresses the purposes of sentencing can be found in *United States v. Cole*, 622 F. Supp. 2d 632 (N.D. Ohio 2008), where the trial court discussed the purposes of sentencing in the following manner:

“We have long understood that sentencing serves the purposes of retribution, deterrence, incapacitation, and rehabilitation. Deterrence, incapacitation, and rehabilitation are prospective and societal—each looks forward and asks: What amount and kind of punishment will help make society safe? In contrast, retribution imposes punishment based upon moral culpability and asks: What penalty is needed to restore the offender to moral standing within the community?”

The Cole court went on to describe how each of these purposes was consistent with the sentencing statute found at §3553, and how the law and the facts (which involved a financial crime) should be analyzed given these sentencing concerns.

With respect to appellate review, I believe that the “abuse of discretion” standard has worked well and will continue to do so. District court judges “live with a case” for a substantial period of time and have face-to-face interactions with the offender. Appellate courts do not have these advantages available to district judges in formulating an appropriate sentence, making a less deferential, “de novo” standard of review inappropriate. While district judges can and do get it wrong from time to time, I believe the current “abuse of discretion” standard adequately allows appellate courts to determine the point at which the latitude afforded district court judges has been transgressed. If a Court of Appeals canvasses the entire record and is left with a “firm and abiding” conviction that the sentence is not “reasonable,” then the Court of Appeals can and should intervene and reverse the district judge. I am not certain that this is a test which “shocks the judicial conscience,” but I am confident that Court of Appeals judges will be able to identify an unreasonable sentence when they see it and articulate the reasons why the sentence is unreasonable in the context of the particular facts of a case.

Lastly, with respect to changes in either the sentencing statutes or the Federal Rules of Criminal Procedure, I would emphasize the necessity of eliminating all mandatory minimum statutes and sentencing enhancement statutes. These statutes unfairly and improperly shift the sentencing function of government from the judicial branch to the executive branch. With respect to Federal Rule of Criminal Procedure 32, it should be expanded to permit a broader exchange of in-

formation in advance of the actual sentencing proceedings. Additional authority should be provided within the Rules to allow medical, psychological, or vocational testing when such testing would aid the sentencing judge in formulating an appropriate sentence.

Thank you for the invitation to submit testimony before the commission. I look forward to the opportunity to verbally address any concerns or questions you may have about my testimony.

### HONORING OUR ARMED FORCES

STAFF SERGEANT STEPHEN MURPHY

Mrs. SHAHEEN. Mr. President, today I wish to express my sincerest condolences and deepest sympathies to the family of SSG Stephen F. Murphy, who died in Al Asad, Iraq, on November 8. Staff Sergeant Murphy, a native of Troy, NH, served his country for 16 years as a member of the U.S. Marine Corps. The American people will forever be grateful for his service.

Staff Sergeant Murphy exemplified the best in America’s long tradition of duty, sacrifice and service. Despite being turned away from a Marine recruiting station as a teenager for being too small and still lacking a high school diploma, Stephen was determined to enlist and rededicated himself to his studies and weight training until he could join the Corps. The selfless determination he displayed is what makes our Armed Forces the best in the world.

When he formally established Veterans Day in 1954, President Eisenhower described the importance of a national day of remembrance: “On that day let us solemnly remember the sacrifices of all those who fought so valiantly, on the seas, in the air, and on foreign shores, to preserve our heritage of freedom, and let us reconsecrate ourselves to the task of promoting an enduring peace so that their efforts shall not have been in vain.”

In the town of Troy this past Veterans Day, those words undoubtedly took on a new poignancy as the community came together to honor the sacrifice of one of its own. Our nation can never fully repay this sacrifice, nor fully assuage the loss to Stephen’s family. Through his years of service, he helped preserve the safety and security of the American people. It now falls to all of us to honor his memory by supporting our veterans and their families and ensuring America’s continued security.

I ask my colleagues to join me and all Americans in honoring the life of SSG Stephen Murphy.

### REMEMBERING AMBASSADOR THOMAS F. STROOCK

Mr. BARRASSO. Mr. President. Wyoming has lost a statesman. On Sunday, December 13, 2009, Ambassador Thomas F. Stroock passed away at the age of 84. Tom once said, “I don’t know why God gave me this wonderful life. Good fortune, I guess.” Those of us who had

the benefit of knowing Tom are certain that his wonderful life was a result of his determination, toughness, and confidence.

Tom served our Nation as a marine in WWII. In 1948, he graduated from Yale University and then found his way to Wyoming. His first job was as a roughneck on an oil rig. The following year, the lovely Marta Freyre de Andrade agreed to be his wife.

Tom was a man who saw possibilities and opportunities. He started his own oil and gas properties firm in 1952, Stroock Leasing Corporation and Alpha Exploration, Inc. It grew to be one of Wyoming’s most respected and successful oil and gas businesses.

While he was busy with his successful energy endeavors, Tom still had much to give Wyoming and our Nation. He served for 16 years in the Wyoming Legislature. He was chairman of the local school board, as well as the Wyoming School Boards Association and Wyoming Higher Education Council. Tom used his energy and business acumen to lead the industry though his service on the Wyoming Natural Gas Pipeline Authority and the Enhanced Oil Recovery Commission.

In 1989, his good friend and college classmate, President George H. W. Bush, tapped him to be the U.S. Ambassador to the Republic of Guatemala. It was a tough assignment. Guatemala was in the midst of a decades-long civil war. Tom approached this job as he did all of his other challenges—with forthrightness and courage. Ambassador Stroock provided challenge and support to our friends in Guatemala as they worked toward a more stable economy, a decrease in political violence and perhaps most notable to the outside world, increased internal safety measures. Tom helped bring about changes that greatly impacted the daily lives of Guatemalans.

Tom Stroock’s accomplishments were numerous. Throughout his lifetime of leadership and service, Marta was at his side. The couple, married for 60 years, served as a pillar of the Casper, WY, community. Their daughters Margie, Sandy, Betty, and Anne, are carrying on their father’s commitment to business and public service.

Mr. President, while we are saddened by the passing of Ambassador Thomas F. Stroock, we are left with the example of a life well lived.

### TRIBUTE TO ERNIE LOMBARD

Mr. RISCH. Mr. President, I rise today to give recognition to Ernie Lombard who has been at the forefront of preserving and recording Idaho’s great past.

For more than 20 years, Ernie has had a vision of a State park that would showcase Idaho’s mining history and allow for motorized recreation. In 2009, the vision was realized when thanks to Ernie’s leadership, the Bayhorse ghost town in Custer County became the newest addition to Idaho’s State park system.